

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

SUGAR RAY THOMAS	§	
VS.	§	CIVIL ACTION NO. 1:24cv216
DIRECTOR, TDCJ-CID	§	

ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Sugar Ray Thomas, proceeding *pro se*, filed the above-styled petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a conviction for aggravated robbery.

The Court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, for consideration pursuant to applicable orders of this Court. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge recommending that the petition be dismissed without prejudice. The recommendation was based on the conclusion that petitioner has not exhausted his state court remedies.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Petitioner filed objections to the Report and Recommendation. The Court must therefore conduct a *de novo* review of the objections in relation to the pleadings and the applicable law.

In his objections, petitioner argues his conviction was improper. However, petitioner does not assert he has filed either a petition for discretionary review with the Texas Court of Criminal Appeals or a state application for writ of habeas corpus. As a result, the Magistrate Judge correctly concluded petitioner has not exhausted his state court remedies.

ORDER

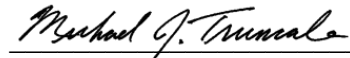
Accordingly, petitioner's objections [Dkt. 3] are OVERRULED. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the Magistrate Judge [Dkt. 2] is ADOPTED. A final judgment will be entered in accordance with the recommendation of the

magistrate judge.

In addition, the Court is of the opinion petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying federal habeas relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner need not demonstrate that he would prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability should be resolve in favor of the petitioner. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir. 2000).

Here, petitioner has not shown that the issue of whether he exhausted his state court remedies is subject to debate among jurists of reason. The factual and legal questions raised have been consistently resolved adversely to his position and the questions presented are not worthy of encouragement to proceed further. As a result, a certificate of appealability shall not issue in this matter.

SIGNED this 22nd day of July, 2024.



Michael J. Truncala
United States District Judge